

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MULTISTAR INDUSTRIES, INC.,

Defendant.

NO. 2:21-CV-0262-TOR

ORDER GRANTING PLAINTIFF’S
MOTION TO ENFORCE
JUDGMENT

BEFORE THE COURT is Plaintiff’s Motion to Enforce Judgment (ECF No. 105). This matter was submitted without oral argument. Defendant has not responded. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Plaintiff’s Motion to Enforce Judgment (ECF No. 105) is GRANTED.

BACKGROUND

The Court granted the United States, on behalf of the Environmental Protection Agency (“EPA”), injunctive relief and related penalties against Multistar Industries, Inc. (Defendant) for various violations of the Clean Air Act,

1 under 42 U.S.C. § 7412(r) and 42 U.S.C. § 7413(b); the regulations promulgated at
2 20 C.F.R. Part 68; the Emergency Planning and Community Right-to-Know Act
3 (EPCRA) Section 312, 42 U.S.C. § 11022; and the regulations promulgated at 40
4 C.F.R. Part 370 relating to activity at Defendant's facility involving more than a
5 threshold quantity of trimethylamine ("TMA") as defined by 40 C.F.R. § 68.115.
6 ECF No. 86 at 1–2, ¶ 1. Defendant has subsequently appealed the findings of this
7 Court. ECF No. 100. The United States asserts that Defendant has not complied
8 with the requirements of the Injunction and seeks its enforcement. ECF No. 105.

9 DISCUSSION

10 Federal Rule of Civil Procedure 62(c)(1) exempts injunctions from an
11 automatic stay while an appeal is pending, unless otherwise ordered by a court.
12 Here, Defendant has not appeared to either request a stay pending its appeal, nor in
13 opposition to this motion to enforce the injunction. *See Lara v. Sec'y of Interior of*
14 *U.S.*, 820 F.2d 1535, 1543 (9th Cir. 1987) (citing to F.R.C.P. 62(c)) ("The district
15 court may issue orders pending appeal to enforce its judgment."); *Hoffman for &*
16 *on Behalf of N.L.R.B. v. Beer Drivers & Salesmen's Loc. Union No. 888, Int'l Bhd.*
17 *of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 536 F.2d 1268, 1276
18 (9th Cir. 1976) (finding that an appeal does not divest the district court of
19 supervisory jurisdiction over an injunction); *Fong v. United States*, 300 F.2d 400,
20 410 (9th Cir. 1962) (holding that filing an appeal, in isolation, did not supersede

the district court’s judgement). Defendant is bound by the terms of the injunction and is subject to the penalties therein for noncompliance. Specifically, Defendant has not filed a Risk Management Plan with U.S. Environmental Protection Agency (“EPA”), in violation of Paragraph 2. ECF No. 105 at 1–2; ECF No. 86 at 2, ¶ 2. Failure to comply with the filing requirements results in the following penalties:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$400	1st through 30th Day
\$800	31st Day and beyond

Id. at 9, ¶ 18.¹

¹ Plaintiff makes reference to Paragraph 19 as the predetermined penalties the Court assessed for noncompliance with the terms of the injunction. ECF No. 105 at 2. However, Paragraph 18 is applicable to the stage of noncompliance Defendant is currently in, as Paragraph 19 refers to Section II of the Order, which includes penalties that do not begin to accrue until January 31. ECF No. 86 at 5, ¶ 11 (“By July 31 and January 31 of each year after the entry of this Order for the next five (5) years, Defendant shall submit electronically (followed by a mailed copy) a semi-annual report for the preceding six months (January 1 to June 30 or July 1 to December 31) to the EPA and U.S. Department of Justice (DOJ) that identifies any noncompliance with the Order, including but not limited to

1 “Predetermined penalties . . . begin to accrue on the day after performance is
2 due or the day a violation occurs, whichever is applicable, and shall continue to
3 accrue until performance is satisfactorily completed or until the violation ceases.”
4 *Id.* at 10, ¶ 21. The August 1, 2023, Injunction required Defendants to file its Risk
5 Management Plan with the EPA within 60 days of the Order, on or before
6 September 30, 2023. *Id.* at 2, ¶ 2. The EPA had received no communication from
7 Defendant regarding the Risk Management Plan prior to filing the Motion to
8 Enforce. ECF No. 105-1 at 2, ¶ 4. From October 1, 2023, through October 30,
9 2023, Defendant incurred a penalty of \$400 a day, for a total \$12,000 for the first
10 30 days. From October 31, 2023, until December 1, 2023, the day the Motion to
11 Enforce was filed, Defendant incurred a penalty of \$800, for a total of \$25,600 for
12 the 32 days of increased penalty. Defendant owes a total of \$37,600 to the United
13 States for penalties incurred in noncompliance.

14 Should Defendant fail to pay the predetermined penalties, it will be liable for
15 interest on the penalty pursuant to 28 U.S.C. § 1961, accruing from the day it
16 became due. ECF No. 86 at 12, ¶ 26. Defendant must submit to the EPA a Risk
17 Management Plan and is cautioned that further noncompliance will also result in
18 _____
19 Paragraphs 1 – 3, an explanation of the likely cause of and remedial steps taken or
20 to be taken to address non-compliance . . .”).

1 additional sanctions.

2 **ACCORDINGLY, IT IS HEREBY ORDERED:**

3 1. Plaintiff's Motion to Enforce Judgment (ECF No. 105) is **GRANTED**.

4 Defendant is ordered to pay \$37,600 to the United States within **30 days**
5 of this Order.

6 2. Pursuant to the Order Granting Injunction (ECF No. 86), Defendant shall
7 send payment via FedWire Electronic Funds Transfer ("EFT") to the U.S.
8 Department of Justice ("DOJ") account in accordance with instruction
9 that have been provided to Defendant by the Financial Litigation Unit
10 ("FLU") of the United States Attorney's Office for the Eastern District of
11 Washington. Within the payment, Defendant must include the provided
12 Consolidated Debt Collection System ("CDCS") number.

13 3. Defendant will send notice of payment stating that the payment is for
14 predetermined penalties owed pursuant to the Order on Injunctive Relief
15 in *United States v. Multistar Industries, Inc.*, Case No. 2:21-cv-0262-
16 TOR, and include the CDCS Number, and the DOJ case number 90-5-2-
17 1-12000/2 to the following:

18 a. The EPA at cinwd_acctsreceivable@epa.gov or via postal mail at
19 EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive,
20 Cincinnati, Ohio 45268;

1 b. DOJ via email or postal mail; and

2 c. The EPA via email or postal mail.

3 4. Defendant is also ordered to produce a Risk Management Plan pursuant
4 to the requirements of the ECF No. 86 within **7 days** of this Order or face
5 further sanctions.

6 The District Court Executive is directed to enter this Order and furnish
7 copies to counsel.

8 DATED January 8, 2024.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge